IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 97 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITUBHAI BABUBHAI VAJA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 97 of 2002

MR HRIDAY BUCH for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 15/04/2002

ORAL JUDGEMENT

The applicant-accused-Jitubhai Babubhai Vaja and respondent No.2-Complainant-Nilesh Muljibhai Nanadha were close friends and had family relations. Unfortunately, because of money transaction, the relations spoiled,

therefore, complaint was filed by the complainant against the present applicant-accused before the court of Chief Judicial Magistrate, Junagadh, which was registered as Criminal Case No.6299/99 for the offences under Section 138 of the Negotiable Instruments Act (for short "the Act").

It was alleged in the complaint that the accused was in need of Rs.25,000/=. The complainant paid Rs.25,000/= to the accused and in turn cheque was given which bounced back, therefore, complaint was filed. Before the learned Magistrate the evidence was led by the complainant in support of his case and after considering the defence of the accused, learned Magistrate came to the conclusion that the complainant proved his case against the accused beyond reasonable doubt and, therefore, convicted the accused for the offences under Section 138 of the Act and sentenced him to suffer six months simple imprisonment and to pay a fine of Rs.2,500/= in default to further undergo ten days S.I. The said judgment and order of sentence dated 10.12.2001 was challenged by the accused by way of Criminal Appeal No.2/2002 before the court of Sessions Judge, Junagadh. The learned Sessions Judge by judgment and order dated 14.2.2002 dismissed the appeal and confirmed the order of conviction and sentence passed by the learned Magistrate. Against which this revision application is filed by the petitioner-accused.

When this matter was placed for admission before my learned Brother D.P.Buch, J. on 22.2.2002, the accused did not surrender, therefore, a statement was made by learned counsel for the petitioner-accused that the accused shall surrender forthwith and accordingly matter was kept on 26.2.2002.

It appears from the order sheet dated 26.2.2002 that as per the statement made at the Bar by learned counsel for the petitioner-accused on 22.2.2002, the accused surrendered and he was kept in Central Jail, Junagadh. Thereupon this petition was admitted and rule was made returnable on 28.3.2002. During the pendency and final disposal of the petition, the accused was ordered to be enlarged on bail on the same terms and conditions as he was released from the Trial Court and order of sentence was suspended with a direction to the petitioner to remain present before this court when the matter is fixed for hearing.

On 1.4.2002 it was stated at the Bar by learned counsel Shri Hriday Buch for petitioner-accused that the

accused and the complainant have compromised the matter outside the court, but due to disturbed situation, they could not remain present before the court. Therefore, he prayed for time to place the settlement arrived at between them in writing before this court and at his request the matter was kept on 8.4.2002.

On 8.4.2002 this matter was adjourned to 15.4.2002 because of the illness of Mr.Buch for petitioner-accused and parties were directed to remain present.

Today, parties have remained present before the court. The petitioner-accused-Jitubhai Babubhai Vaja is identified by his counsel Mr.Hriday Buch and complainant-respondent No.2-Nilesh Muljibhai Nanadha is identified by his counsel Shri Nanavati, on the basis of his passport. They have filed pursis dated 15.4.2002 stating that they have compromised the matter outside the court, therefore, appropriate order be passed in the matter.

On the basis of the judgment of the learned Single Judge of this court in case of Rupabhai Bhalabhai Bharwad Vs. State of Gujarat reported in 1994(1) GLR 415 which has been subsequently relied upon by another Single Judge of this court in the case of Naimesh P. Pandya Vs. State of Gujarat reported in 1999(2) Crimes 79, learned counsel Mr.Buch for the petitioner-accused firstly submitted that the parties have compromised the matter, therefore, the impugned order of conviction and sentence passed by the court below be set aside and the petitioner be acquitted.

In the first case of Rupabhai the offences were under the Atrocities Act, 1989 and Civil Rights Act, 1955, which was later on relied upon by another learned Single Judge of this court in case of Naimesh (supra) and offence in that case was under Section 138 of the provisions of Negotiable Instruments Act, 1881.

Under Section 320 of Cr.P.C. certain offences under Indian Penal Code are compoundable without the permission of the court and certain offences are compoundable with the permission of the court u/S.320 of Cr.P.C. Meaning thereby even though the parties may compromise the matter, but the court may or may not grant permission. Except provisions under Section 320 Cr.P.C. there is no other provision under which the offences can be compounded. In absence of clear mandate provided by the Legislation under the Negotiable Instruments Act no

permission can be granted by any court to compound the offences punishable under Section 138 of Negotiable Instrument Act. Even if the parties compromised the matter but on that basis the order of conviction and sentence recorded by the courts below cannot be set aside. But, there is a judgment of this court in Naimesh's case (supra) taking different view of the matter that offence u/S.138 of the Negotiable Instrument Act can be compoundable. With due respect I do not agree with the same for the reasons stated hereinabove. Under the circumstances, I would have referred the matter to the Larger Bench, but learned counsel Shri Buch for the petitioner-accused has later on not pressed this point for acquittal and submitted that the petitioner has remained in jail for few days after his surrender and, therefore, on the basis of compromise while confirming the order of conviction the order of sentence be modified and order of substantive sentence be reduced as sentence as already undergone and the fine paid by the accused may ordered to be refunded, therefore, I am not referring the matter to the Larger Bench and deciding it on the point of sentence only.

On facts of this case, the learned APP Mr.Kodekar and complainant No.2-Nilesh Muljibhai Nanadha, who is present before the court have no objection to the reduction of sentence.

In view of the above, the impugned judgment and order of conviction recorded by the courts below convicting the accused-petitioner for the offence under Section 138 of the Act is hereby confirmed. However, the order of substantive sentence of six months S.I. and fine of Rs.2,500/= passed by the learned Magistrate, which is confirmed in the appeal by the Sessions Court is modified and the substantive sentence of six months S.I. imposed by the trial court, which has been confirmed in appeal by the trial court, is hereby reduced to the sentence as already undergone by the petitioner-accused and the order of fine of Rs.2,500/=, if paid, is ordered to be refunded to the petitioner-accused.

Accordingly, this revision petition is partly allowed on the point of sentence only. The petitioner-accused at present is enlarged on bail, therefore, his bail bonds stands cancelled. If he is not required in any other offence, then he is ordered to be set at liberty forthwith. Rule is made absolute to the aforesaid extent only. D.S. permitted.

(B.J.Shethna, J.)

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